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6 PIXART IMAGING (U.S.A.), INC.
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

12 ASUSTEK COMPUTER INC. AND
13 ASUS COMPUTER INTERNATIONAL,

14 Plaintiffs,

15 v.

16 ROUND ROCK RESEARCH, LLC,
17 AMERICAN MEGATRENDS INC.,
SAMSUNG ELECTRONICS CO., LTD.,

18 Defendants.

19 Case No. 3:12-cv-02099-JST

**DECLARATION OF DUANE H.
MATHIOWETZ IN SUPPORT OF
MOTION TO QUASH DEPOSITION
SUBPOENA TO NON-PARTY PIXART
IMAGING (U.S.A.), INC. AND REQUEST
FOR SANCTIONS**

DATE: December 5, 2013
TIME: 2:00 p.m.
COURTROOM: 9
JUDGE: Hon. Jon S. Tigar

21 I, Duane Mathiowetz, declare as follows:

22 1. I am a partner in the law firm of Schiff Hardin LLP, counsel for PixArt Imaging
23 (U.S.A.) ("PixArt USA") in the above-captioned case and a member of the Bar of this Court. I
24 make each of the statements below based on my own personal knowledge, and if called as a
25 witness, I could and would testify competently to the contents of this declaration.

26 2. On or about September 12, 2013, Round Rock caused the Deposition Subpoena
27 attached hereto as Exhibit 1 to be served upon PixArt USA's registered agent for service of

1 process. The Deposition Subpoena requires one or more individuals to provide testimony on
 2 October 9, 2013, on twenty-five topics set forth in Schedule A to the subpoena.

3 3. On or about January 7, 2013, Round Rock had served a subpoena *duces tecum* on
 4 PixArt USA demanding the production of fifteen categories of documents pertaining to the
 5 manufacture, sale or offer to sell “Products” to Plaintiffs ASUSTek Computer, Inc. and ASUS
 6 Computer International. The same definitions were given for “PixArt,” “You,” Your,” and
 7 “Product” in that subpoena as in its Deposition Subpoena. In response to the subpoena *duces*
 8 *tecum*, I called Round Rock’s counsel, Lauren Nowierski of the Desmarais LLP firm, on January
 9 10, 2013, and advised her that PixArt USA does not manufacture, sell or offer to sell, nor has it
 10 done so in the past, the PixArt PAS6311LT image sensor that is the subject of that subpoena. I
 11 further informed Ms. Nowierski that PixArt USA has no documents identified in the subpoena in
 12 its possession, custody or control, and therefore would not be producing any documents in
 13 response to the subpoena. I confirmed our conversation in writing on January 15, 2013, a copy of
 14 which is attached as Exhibit 2.

15 4. PixArt’s response to the subpoena *duces tecum* apparently satisfied Round Rock,
 16 or so I thought, as I received no further correspondence on the matter until August 29, 2013,
 17 when I received an email from Round Rock’s counsel indicating that she was “interested in
 18 understanding a bit more about your response to our subpoena.” That correspondence is attached
 19 as Exhibit 3.

20 5. I subsequently spoke with Ms. Nowierski on September 13, 2013, and explained,
 21 again, that PixArt USA has no documents subject to the subpoena. She asked if PixArt USA had
 22 access to any such documents, and I told her that it does not have possession, custody or control
 23 of documents pertaining to the identified “Product,” and that PixArt USA has nothing to do with
 24 the design, manufacture or sale of the product, which is completely within the realm of PixArt
 25 Imaging, Inc., the parent company located in Taiwan. Interestingly, Round Rock’s counsel did
 26 not disclose during that conversation that Round Rock had caused the Deposition Subpoena to
 27 issue on September 12.

28 6. On September 25, 2013, I confirmed my September 13 conversation with Ms.

1 Nowierski via email, specifically noting again that PixArt USA does not have possession, custody
 2 or control of the documents requested in the subpoena *duces tecum*. I also indicated that PixArt
 3 USA has no information pertaining to the Deposition Subpoena topics, and provided PixArt
 4 USA's timely objections to the Deposition Subpoena. Finally, I requested that Round Rock
 5 withdraw the Deposition Subpoena or agree that no appearance is necessary, and if such action
 6 was not taken, PixArt USA would file a motion to quash and seek appropriate fees and sanctions.
 7 That email correspondence is attached as Exhibit 4, and the objections served pursuant to Rule
 8 45(d)(2)(B) are attached hereto as Exhibit 5.

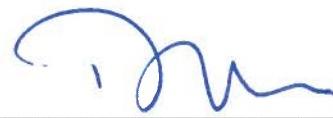
9 7. I made a follow-up inquiry by email to Ms. Nowierski, to which she responded on
 10 October 1, 2013, indicating that Round Rock wanted more time to consider PixArt USA's
 11 objections to the Deposition Subpoena, and offered that a new response date for the subpoena
 12 would be Friday, October 18, 2013. I agreed to the new date, and again requested that Round
 13 Rock "withdraw the subpoena as soon as possible." Ms. Nowierski's October 1 email and my
 14 response of the same date are attached as Exhibit 6.

15 8. On October 16, 2013, with the October 18 deadline approaching and still not
 16 having received a definitive answer from Round Rock, I sent Round Rock's counsel Ms.
 17 Nowierski yet another email inquiry/request for a decision on the subpoena. On October 17,
 18 2013, I called Ms. Nowierski and she told me she was in a meeting but would call back within an
 19 hour with a decision. By the morning of October 18, 2013, Ms. Nowierski and Round Rock still
 20 had not responded. Hoping to avoid filing a motion to quash and in order to preserve PixArt
 21 USA's rights, I sent yet another email, requesting that the subpoena be withdrawn or Round Rock
 22 agree to a new response date of November 11, 2013, if it needed still more time to reach a
 23 decision. That email correspondence is attached as Exhibit 7. As of the filing of the motion to
 24 quash and this declaration, Round Rock has not responded.

25 I declare under penalty of perjury under the laws of the State of California that the
 26 foregoing is true and correct.

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1 Executed on October 18, 2013 at San Francisco, California.
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Duane H. Mathiowetz

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